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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LORENZO JOHNSON,

Plaintiff,

No. 08-03932 JSW

v.

**ORDER GRANTING IN PART
AND DENYING WITHOUT
PREJUDICE IN PART
DISCOVERY DISPUTE**

CITY OF OAKLAND, ET AL.,

Defendants.

_____ /
This matter comes before the Court upon consideration of the parties’ joint letter brief regarding Defendants’ requests to: (1) file a motion for contempt against Tim Watson; and (2) to compel Plaintiff to undergo a psychiatric independent medical examination (“IME”).

Defendants’ request to file a motion for contempt is GRANTED. Defendants shall notice that motion for hearing on an open date on this Court’s calendar in accordance with Northern District Civil Local Rule 7-2(a).

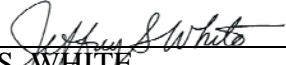
In order to require Plaintiff to undergo an IME, Defendants must establish both that Plaintiff’s mental condition is in controversy and that there is good cause for the examination. *See, e.g., Ford v. Contra Costa County*, 179 F.R.D. 579, 580 (N.D. Cal. 1988). Defendants bear the burden of showing on both prongs of this test. *Id.* Plaintiff has asserted a claim for intentional infliction of emotional distress, which would support a conclusion that Plaintiff has placed his mental state in controversy. *Id.*; *see also Turner v. Imperial Stores*, 161 F.R.D. 89, 98 (S.D. Cal. 1995). However, the Court concludes that Defendants have not met their burden to show that good cause exists for the IME. Accordingly, the Court DENIES WITHOUT

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PREJUDICE the request pending a further showing as to why the discovery produced to date is insufficient to address the issue of Plaintiff's mental state.

IT IS SO ORDERED.

Dated: August 11, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE